



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 3844-00
22 November 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: MAJ [REDACTED] SMG [REDACTED]
REVIEW OF NAVAL RECORD (RECONSIDERATION)

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 26 Mar 96
(2) BCNR ltr BJB Docket No: 3206-96 dtd 7 Aug 96 w/encl
(3) Memo for record dtd 6 Jan 00
(4) BCNR rept to SECNAV, BJB Docket No: 12386-93 dtd 9 Mar 94
less encls
(5) HQMC MMOA-4 memo dtd 30 Oct 00
(6) HQMC MMPR memo dtd 9 Oct 00 w/encl
(7) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show the lineal position, date of rank, and effective date in the grade of major he would have been assigned had he been selected for promotion to that grade by the Fiscal Year (FY) 1994 Major Selection Board, vice a special selection board for the FY 1995 Major Selection Board. He specifically requested that his date of rank be changed to 1 July 1994. Enclosure (2) shows that his request was denied on 7 August 1996. Enclosure (3) reflects he verbally renewed his request, having been advised by the Board's staff that he had a basis for reconsideration.

2. The Board, consisting of Messrs. Frankfurt and Pfeiffer and Ms. Newman, reviewed Petitioner's allegations of error and injustice on 16 November 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (2) shows the Board denied Petitioner's original request to backdate his promotion, docket number 3206-96, on the erroneous premise that they were unable to find any defect in his consideration by the FY 1994 Major Selection Board. Enclosure (4) reflects that in his prior case, docket number 12386-93, they had in fact removed his failures by the FY 1994 and 1995 Major Selection Boards; and they had found that his record before the FY 1994 Major Selection Board had included his fitness report for 1 February to 8 July 1986, whose removal was later directed by the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB).

c. In correspondence attached as enclosure (5), the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), the office with cognizance over the subject matter of this case, has commented to the effect that Petitioner's request has merit and warrants favorable action.

d. In correspondence attached as enclosure (6), the HQMC Promotion Branch (MMPR) also commented to the effect that they supported adjustment of Petitioner's date of rank. They further advised that had he been selected by the FY 1994 Major Selection Board, he would have been assigned a date of rank and effective date of 1 July 1994.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (5) and (6), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

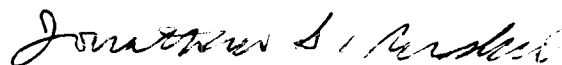
a. That Petitioner's naval record be corrected, where appropriate, to show his date of rank and effective date in the grade of major as 1 July 1994; and that his lineal precedence be adjusted accordingly.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

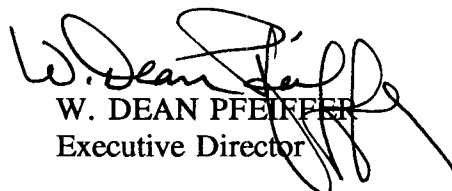
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

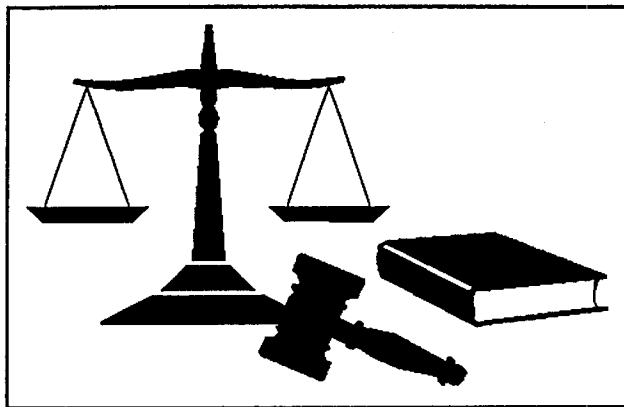
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



BOARD FOR CORRECTION OF NAVAL RECORDS

MEMORANDUM FOR THE RECORD

I, B. J. GEORGE, ESQ., TALKED WITH ~~REDACTED~~ AG DATE: 1-6-00.TIME: 9:00 (A.M.) P.M. OF . PHONE NUMBER: N/A.DOCKET NO: 3206-96. I CALLED. PARTY CALLED.WHAT PARTY SAID: He informed me that he wanted to backdate
his DOR + eff date of his prem to maj to FY-94.WHAT I SAID: I informed him that he had a basis to
backdate his prem to maj to FY-94.FOLLOW-UP REQUIRED: N/ABrian J. George



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1600
MMOA-4
30 Oct 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR MAJOR [REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
Major [REDACTED] USMC
of 25 Oct 00

1. Recommend approval of [REDACTED]'s request for backdating his
date of rank.

by the FY-94
+95 USMC Maj
Sel Bts.
BB

2. Per the reference, we reviewed [REDACTED] record. He
successfully petitioned the Performance Evaluation Review Board for
removal of the Transfer fitness report of 860201 to 860708 and the
Board for Correction of Naval Records for removal of his failure of
selection. Subsequently, he was selected for promotion by the FY
USMC Major Selection Board. [REDACTED] requests backdating of
his date of rank. BB 195 BB

Special BB

3. In our opinion [REDACTED] should be afforded the benefit of
the doubt and have his date of rank backdated.

4. [REDACTED]

[REDACTED]

Lieutenant Colonel, U.S. Marine Corps
Officer Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

1412/2
IN REPLY REFER TO:
MMPR
9 OCT 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]
[REDACTED]

Ref: (a) MMER Route Sheet of 22 Sep 00
(b) SecNav Memo 1401/2 MMPR 17 May 2000
(c) SecNavInst 1401.1B

Encl: (1) SecNav Memo 1401/2 MMPR 17 May 2000

1. Reference (a) requested an advisory opinion in the case of [REDACTED] [REDACTED] is requesting an adjustment to his date of rank, adjustment to his effective date of promotion to major, removal of his failure of selections before the FY00, and FY01 USMC Lieutenant Colonel Promotion Selection Boards, and a special selection board (SSB) for the FY00 USMC Lieutenant Colonel Promotion Selection Board.

2. The following facts are germane to this case:

a. Based on a review of our lineal files, [REDACTED]'s adjusted date of rank should be 1 July 1994, and his lineal precedence of 00459500.

b. Based upon the information provided, Promotion Branch strongly recommends his failure of selections not be removed.

c. Both the Commandant of the Marine Corps and the Secretary of the Navy have reviewed the circumstances surrounding this case, and subsequently denied his petition. Enclosure (1) provides details on the Secretary's decision.

3. Promotion Branch supports adjustment of [REDACTED]'s date of rank, but does not support removing his failure of selections or SSB request.

4. The point of contact in this matter [REDACTED] at [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Head, Officer Promotion Section



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1401/2
MMPR

17 MAY 2000

MEMORANDUM FOR SECRETARY OF THE NAVY

Subj: SPECIAL SELECTION BOARD REQUEST IN THE CASE OF MAJOR
[REDACTED] USMC

Ref: (a) SECNAVINST 1401.1B
(b) Title 10, U. S. Code

1. Reference (a) permits consideration for promotion of an officer by a special selection board if the officer was considered but not selected by a regularly scheduled selection board, and the Secretary of the Navy determines the action of the board was contrary to law, involved material error of fact, administrative error, or resulted from the board not having before it material information for consideration.

2. [REDACTED] is requesting consideration by a special selection board (SSB). He contends he failed of selection before the FY00 and FY01 USMC Lieutenant Colonel Promotion Selection Boards, which convened 981118 and 991029, based on material error of fact. Specifically, he believes that his non-selection was due to the fact that his date of rank was backdated 8 months following his selection to major at a special selection board in 1995.

3. The facts germane to this case:

a. [REDACTED] was eligible for the USMC Lieutenant Colonel Promotion Selection Board as an in zone officer in FY00 and as an above zone officer in FY01. He was not selected for promotion by either promotion selection board.

b. [REDACTED] petitioned for a special selection board for the FY95 USMC Major Promotion Selection Board on 940304 and subsequently received a special selection board based on material error of fact. He was selected by the board on 941123, awarded a backdate of rank to 940901, and actually promoted in April 1995 (after Senate confirmation).

c. Both reference (a) paragraph 14 and section 628(d)(2) of reference (b) clearly state that the officer will receive a backdate of rank if selected at a special selection board.

d. [REDACTED] contends that his backdate of rank disadvantage him from eight months of observed time as a major.

Subj: SPECIAL SELECTION BOARD REQUEST IN THE CASE OF MAJOR
[REDACTED] 2 USMC

e. During the period in question [REDACTED] fitness reports properly reflected his status as a captain.

f. [REDACTED] fails to demonstrate that the action of the board was contrary to law, involved material error of fact, administrative error, or resulted from the board not having before it material information for consideration. His record was accurate and complete before both boards, and he was given fair and equitable consideration. If a special selection board were to be awarded, his same record would be considered before the special selection board.

g. Periods of observed fitness reports vary widely amongst the eligible officers for a board. [REDACTED] eight month period of observed time as a captain did not disadvantaged him.

4. [REDACTED] request does not meet the requirements for a special selection board per reference (a), in that there was no error in the boards' actions and his record was substantially complete and accurate when the boards convened.

5. Based upon the foregoing analysis, I recommend [REDACTED] request for consideration by a special selection board be disapproved.

[REDACTED]
Commandant of the Marine Corps

FOR DECISION BY THE SECRETARY OF THE NAVY

Approve Special Selection Board Request _____

Disapprove Special Selection Board Request _____

22 June 2000

Other _____